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Kevin Smith

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of the supreme court,
court of appeals and
tax court

BARNES, Judge

Case Summary

Brandon Rogers appeals his twenty-year sentence for Class B felony possession of cocaine. We affirm.

Issues

Rogers raises two issues, which we restate as:

- I. whether the trial court abused its discretion by failing to consider his guilty plea as mitigating; and
- II. whether his sentence is appropriate.

Facts

On April 28, 2005, the Greendale Police Department and the Dearborn County Sheriff's Department executed a search warrant allowing them to search a home in Greendale. During the search, police officers found Rogers and another man hiding in a bedroom. In the same bedroom, police discovered two bags of cocaine in a trashcan. On April 29, 2005, Rogers was charged with Class A felony possession of cocaine, Class A felony conspiracy to possess cocaine, and Class D felony conspiracy to maintain a common nuisance. A jury convicted Rogers as charged, Rogers appealed, and we reversed his conviction based on the improper admission of evidence. See Rogers v. State, No. 15A01-0512-CR-573 (Ind. Ct. App. Oct. 31, 2006).

On remand, Rogers pled guilty to Class B felony possession of cocaine and the State dismissed the remaining charges. The trial court sentenced Rogers to twenty years in the Department of Correction. Rogers now appeals his sentence.

Analysis

I. Guilty Plea as a Mitigator

Rogers first argues that the trial court abused its discretion by failing to consider his guilty plea as a mitigator. In reviewing a sentence imposed under the current advisory scheme, we engage in a four-step process. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal only for an abuse of discretion. Id. Third, the weight given to those reasons—the aggravators and mitigators—is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

In sentencing Rogers, the trial court considered his extensive criminal history as aggravating and his remorse as mitigating. The trial court determined that Rogers’s criminal history “significantly outweighs the mitigating circumstances.” Tr. p. 45. The trial court sentenced Rogers to twenty years and stated, “I am taking the mitigating circumstances I found in consideration for how much I’m going to suspend off of that. The Court is suspending three years of that sentence so that’s 1,095 days. So that’s 20 years, 3 suspended, 17 executed.” Id.

Rogers argues that the trial court abused its discretion by failing to give any mitigating weight to his guilty plea and that because the trial court might not have

imposed the same sentence had it properly considered the guilty plea, we should remand for resentencing. We disagree.

On rehearing in Anglemyer v. State, 875 N.E.2d 218, 220 (Ind. 2007), our supreme court addressed the same issue. Our supreme court acknowledged:

We have held that a defendant who pleads guilty deserves “some” mitigating weight be given to the plea in return. But an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant. And the significance of a guilty plea as a mitigating factor varies from case to case. For example, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant’s acceptance of responsibility . . . or when the defendant receives a substantial benefit in return for the plea.

Anglemyer, 875 N.E.2d at 220-21 (citations omitted) (emphasis added).

Therefore, to establish that the trial court abused its discretion, Rogers must show that the trial court failed to identify a significant mitigating factor. See id. Rogers made no such showing. Rogers’s guilty plea to Class B felony possession of cocaine is not a significant mitigator because he received a substantial benefit in exchange for his plea—the State dismissed two Class A felony charges and a Class D felony charge. Accordingly, Rogers has not established that the trial court abused its discretion in failing to identify his guilty plea as a mitigator.

II. Appropriateness

Rogers also claims that his twenty-year sentence for Class B felony possession of cocaine is inappropriate in light of the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not

require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Regarding the nature of the offense, Rogers claims that his offense is not “significantly more egregious” than an ordinary possession case. Appellant’s Br. p. 7. To the contrary, based on the evidence recovered from the house where Rogers was found, including for example a digital scale and a ledger, it appears that Rogers was associated with a large scale drug operation.

Additionally, Rogers’s character more than warrants the imposition of the maximum sentence. Rogers’s criminal history is extensive and drug-related. As a juvenile, Rogers was adjudicated a delinquent¹ for curfew violations, minor consumption, and possession of marijuana and paraphernalia. During this time, Rogers violated his probation five times. As an adult, Rogers has been convicted in Ohio and Indiana. His criminal history includes convictions for receiving stolen property, disorderly conduct, possession of marijuana, “having a weapon under disability,” “possession of drugs,” and possession of a schedule II controlled substance. App. p. 379. Rogers also violated probation twice. Thus, in less than ten years, Rogers accumulated seven probation violations, five juvenile adjudications, and seven adult convictions. Although Rogers has

¹ These delinquency adjudications include both formal and informal adjustments.

acknowledged his remorse and has taken positive steps while incarcerated, we nevertheless conclude that the nature of the offense and his criminal history warrant the imposition of the twenty-year sentence.

Conclusion

The trial court did not abuse its discretion in declining to recognize Rogers's guilty plea as a mitigator, and his sentence is not inappropriate. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.